

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2163 of 2000
with
CIVIL APPLICATION NO. 8461 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO. LTD.

Versus

ZERABIBI WD/O SAIDMOHMAD ARAB

Appearance:

MR JD AJMERA for Petitioner

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE K.M.MEHTA

Date of decision: 20/09/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The only question which has been raised, vehemently, by and on behalf of the appellant New India Assurance Company Limited, original opponent No. 5, in this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the new Act'), challenging the legality and validity of the judgement and award recorded in MACP No. 161 of 1991 by the Motor Accident Claims Tribunal (Auxiliary), Panchmahals at Godhra, on 30.12.1999, is that the appellant being insurer in respect of a truck involved in the accident is not liable for payment of compensation to the original claimants since the deceased was travelling in the truck of the insured No. GTW-8811, unauthorisedly. This submission, prima facie, may appear to be subtle but not sound.

2. In support of this submission, reliance is placed on the provisions of Section 147 of the new Act, as they stood prior to the date of amendment which came into force on 14.11.1994 by virtue of Amendment Act 54 of 1994 whereby the expression "including owner of the goods or his authorised representative carried in the vehicle" came to be inserted. It is true that the accident in the present case occurred on 19.3.1990. The deceased Saidmohmad was travelling in the truck involved in the accident along with his goods on payment of fare. Unfortunately, on account of rash and negligent driving on the part of the driver of the offending truck, his life was cut short as the truck dashed with other truck. The Tribunal has, also, accepted that the deceased was travelling in the offending truck along with his goods and the insurance policy, in view of the provisions of Section 147 of the new Act, covered the risk of the deceased. The Tribunal awarded an amount of Rs. 2,37,600/- by way of compensation to the respondents original claimants for the, untimely, demise of the bread winner.

3. Reliance is placed on the decision of the Hon'ble Apex Court in the case of MALLAWWA VS. ORIENTAL INSURANCE CO. LTD. reported in AIR 1999 SC 589 and it has been contended that the liability of Insurance Company in case like the one on hand or having similar factual situation would not arise unless accident occurred after the amended provisions came to be introduced like that on or before 14.11.1994. On behalf of the appellant, the decision of the Hon'ble Apex Court in the case of NEW INDIA ASSURANCE COMPANY VS. SATPAL SINGH reported in AIR 2000 SC 235 is sought to be explained and distinguished. In that it has been further contended that the liability of the Insurance Company has

to be excluded in all the cases prior to the amendment date like that 14.11.1994. The submission that under the new Act like Motor Vehicles Act, 1988, under Section 147 liability of the Insurance Company in case of third party, risk will not arise in a case when a person or passenger is travelling in a goods vehicle, gratuitously, unless case is covered by the amended provisions of Section 147. In SATPAL SING's case (supra) the accident had occurred on 11.3.1990 culminating into a death for which claim petition was filed. In course of proceedings in that case, interim award under Section 140 in the sum of Rs. 25,000/- came to be passed against the owner-insured and the insurer.

4. The claimants as well as the Insurance Company had challenged the said award before the High Court. A Division Bench of the High Court dismissed the appeal filed by the Insurance Company but allowed the other appeal filed by the claimants and awarded double the amount by way of compensation which led to the filing of Special Leave Petition at the instance of the Insurer contending again that the Insurance Company, in a case of passengers travelling in goods vehicle cannot be fastened with the liability in view of the unamended provisions of Section 147 of the new Act. In SATPAL SINGH's case (supra) the decision of the Hon'ble Supreme Court in MALLAWWA's case (supra) was considered and it is dealt with in paras 7, 8, 9 and 10, extensively, in the judgement. It would be very interesting to refer to the observations made by the Hon'ble Supreme Court in SATPAL SING's case (supra) in penultimate paragraph 11 which reads as follows:-

"The result is that under the new Act an insurance policy covering third party risk is not required to exclude gratuitous passengers in a vehicle, no matter that the vehicle is of any type or class. Hence the decisions rendered under the old Act vis-a-vis gratuitous passengers are of no avail while considering the liability of the Insurance Company in respect of any accident which occurred or would occur after the new Act came into force."

5. In view of the ratio propounded in SATPAL SING's case (supra) explaining the decision in the case of MALLAWWA's case (supra) is, directly, attracted to the factual situation obtainable in the case on hand in this appeal. In the result, the appeal is required to be dismissed at the threshold as no other contentions are raised, presumably, in so far as quantification of

damages is concerned as the amount appears to be just and reasonable.

6. The appellant insurer is directed to deposit the amount due and payable under the impugned award deducting the amount already deposited within a period of two months from today before the Tribunal. The amount of Rs. 25,000/- under section 173 of the new Act before this Court shall be transmitted by the office to the Tribunal concerned, immediately, and the Tribunal is directed to pass appropriate order for disbursement and deposit. Upon the amount being deposited before the Tribunal and upon the amount being transmitted by the Registry of this court, bearing in mind the celebrated principles of law highlighted in MULJIBHAI VS. UNITED INDIA INSU. CO. reported in 23(1) GLR 756 so that the interest of the claimants is safeguarded and the amount of compensation coming to the claimants is not frittered away since they will not be able to exercise required disbursement and expending the same.

In the result the appeal is dismissed with no order as to costs.

In view of the order passed in the main matter, no orders are passed on the Civil Application.

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